

**DIVISION OF ADMINISTRATIVE LAW APPEALS
2014 REPORT TO THE GENERAL COURT PURSUANT TO § 4H OF
CHAPTER 7 OF THE GENERAL LAWS**

Executive Summary

This report is submitted for calendar year 2014 pursuant to § 4H of Chapter 7 of the General Laws. In addition to a report of the status and disposition of the cases received in 2014 as required by the statute, we are also including an overview of our full operation, including the status of our backlog.

In summary, in calendar 2014 on its General Jurisdiction side, the Division has continued in a maintenance mode with respect to its permanent staff and has implemented the \$100,000 pilot program earmarked by the legislature to reduce the retirement case backlog using part-time, temporary contract magistrates. In calendar 2014, the Division's over all General Jurisdiction backlog grew slightly by 41 cases, reflecting a 221 case increase of nursing home rate cases and a 154 decrease in the retirement case backlog. Tab 1 contains a 15-year summary of the cases opened/cases closed on the General Jurisdiction side. Tab 2 contains a summary of open General Jurisdiction cases as of March 23, 2015. This summary shows that the General Jurisdiction unit has a current backlog of 4885 cases, 133 cases fewer than at the same period last year. As shown in Tab 1, this backlog was built up mostly in the years before 2010. The principal backlogs are public employee retirement cases (1352 cases, 235 fewer than last year) and nursing home rate cases (3287 cases, 183 more than last year). Because the Division currently has only nine full-time magistrates, including the Chief Administrative Magistrate, to hear and decide the General Jurisdiction

cases, the backlog and case pending times will continue to be problems for the foreseeable future. Based on long-term performance and the necessary requirements of case procedures, it is clear that we will never be able to make significant inroads into the backlog with our current permanent resources. However, given ongoing budget restrictions and the fact that, in the last several years, we have increased productivity so as to process approximately as many existing cases as we receive in new ones, we have concluded that the appropriate solution to the backlog is, in addition to backfilling one full-time position made vacant by retirement, to retain and train a cadre of part-time, temporary contract magistrates to focus on hearings of the backlog cases. The FY 2014 budget included \$100,000 program earmarked to reduce the backlog of retirement cases. This relatively modest amount was successful in enabling us to reduce the retirement case backlog by 241 cases, or 15.2% of the backlog existing as of this time last year. Unfortunately, given budget constraints, this program has been essentially eliminated for the next fiscal year.

The Bureau of Special Education Appeals, an independent unit within the Division, received 1030 mediation requests in fiscal 2014, 108 fewer than last year, and conducted 790 mediations, 28 fewer than last year. Its mediation success rate was 84.3%. It received 590 hearing requests, 38 more than last year, and held 25 hearings, 5 fewer than last year. Tab 3 contains a 13-year summary of the BSEA's annual statistics. Tab 4 contains its most recent statistical report of operations for federal Fiscal Year 2014. The Bureau has met all of its statutory and regulatory requirements for processing pending cases.

The reduction in hearings and mediations reflects reductions in the numbers of cases reaching each stage before resolution and is unrelated to any performance measures.

PART I: OVERVIEW OF THE DIVISION AND ITS MISSION

The Division of Administrative Law Appeals (DALA) is an independent agency that provides due process adjudicatory hearings and other dispute resolution services for other Massachusetts state administrative agencies. It has two independent units, its General Jurisdiction unit and the Bureau of Special Education Appeals.

General Jurisdiction

The mission of the General Jurisdiction unit is to provide the due process hearings that are the pre-condition of other agencies' final agency actions and, when provided for by statute, to hear *de novo* appeals of other agencies' decisions. For this unit, the Division's services are limited to providing due process adjudications only. The General Jurisdiction unit currently has 9 full-time magistrates, including the Chief Administrative Magistrate and one open position made vacant by a retirement.

General Jurisdiction cases come to DALA in two ways: (1) by legislation mandating that certain types of cases be heard at DALA; and (2) upon request of an agency, subject to the approval of the DALA Chief Administrative Magistrate and the Secretary of Administration and Finance (A&F). Currently, DALA conducts hearings for approximately 20 state agencies, including the Civil Service Commission, the Contributory Retirement Appeal Board, the Board of

Registration in Medicine, the Department of Public Health, and the Fair Labor Division of the Office of the Attorney General.

Although for historical reasons the name of the Division refers to administrative law “appeals,” most of DALA’s proceedings are not appellate in nature. Rather, they are an integral part of an operating agency’s due process proceedings. Before an agency may take a final action affecting a person’s rights, it must provide that person with the opportunity for a hearing in which the person may present any evidence relevant to the agency’s decision. In such cases, the agency may hold its own hearing with its own personnel or it can refer the matter for hearing to DALA as a “central panel.” In these cases, DALA conducts the hearing and makes a “recommended decision” to the agency. A Board of Registration in Medicine proceeding to sanction a medical doctor is one example of this type of case. Because resolution of hearing requests in such “enforcement” cases is a necessary predicate to the agency’s imposition of a sanction, they are generally given priority and heard on a current basis.

Some of the Division’s cases are truly appellate in nature. For example, nursing homes that are aggrieved by a rate-setting decision of the Executive Office of Health and Human Services may appeal the rates to the Division.

Some cases are hybrid in nature. For example, in public employee retirement cases, if a member of the state, teachers’ or a municipal retirement system is aggrieved by an action taken by the retirement board, he or she may “appeal” to the Contributory Retirement Appeal Board. Such cases are referred to DALA for hearing. While the proceeding is called an “appeal” under the

statute, the proceeding is “*de novo*” in the sense that the prior proceeding before the retirement board is irrelevant to any future proceeding and the DALA magistrate decides the matter anew based on the evidence and argument the parties have presented at DALA. Judicial appellate review is limited to the record made before DALA.

While the General Jurisdiction unit currently has a backlog of benefit and nursing home rate cases that may preclude taking on any additional jurisdictions, we believe that the central panel approach to administrative adjudication is the most effective approach for the Commonwealth and for an agency to meet its due process obligations, especially for smaller agencies that cannot efficiently maintain a separate hearing function. In such cases, the central panel can provide the due process hearings more efficiently and provide the degree of independence that is the hallmark of a true due process proceeding. The Division’s vision is to be recognized as the best choice for providing due process administrative adjudications and other forms of administrative dispute resolution in the Commonwealth and for its procedures to be recognized as the standard for “best practices” for administrative dispute resolution. Such recognition is unlikely to be achieved until the Division has resources adequate to handle all appeals on a current basis.

In addition, as demonstrated below with respect to the Bureau of Special Education Appeals, we believe that mediation is an effective tool for administrative dispute resolution in cases in which the parties have discretion to design and adopt alternative remedies. While the Division does not currently

have the resources necessary to provide such a service, we see it as an important goal for the future.

Bureau of Special Education Appeals

The Bureau of Special Education Appeals (BSEA), an independent unit within DALA, provides a broad range of dispute resolution services applicable to resolution of disputes with respect to eligibility, evaluation, placement, individualized education programs (IEPs), special education services and procedural protections for students with disabilities. BSEA's dispute resolution services include conducting mediations and hearings and providing advisory opinions. Within the last five years, the Bureau has also provided facilitators for school districts' individualized education plan meetings. Parties to these proceedings may include parents, school districts, private schools, the Department of Education, and other state agencies. BSEA's case flow over the last Twelve years can be seen in Tab 3.

The BSEA is primarily federally funded through a grant managed by the Department of Elementary and Secondary Education (DESE). The Bureau was transferred from the DESE to the Division of Administrative Law Appeals by Chapter 131 of the Acts of 2010 to ensure independence from any educational agency that could be a party to or interested in the proceedings before the Bureau. Pursuant to the transfer legislation, the Bureau and its caseload are managed independently of DALA's other operations.

Challenges

While DALA has continued to improve its operations with great success, the Division faces a number of resource and political challenges that could potentially impact its ability to continue to achieve its strategic goals.

On the General Jurisdiction side, DALA has, at least until the last couple of years, run a deficit in the number of cases processed in relation to the number of cases filed such that the current backlog is 4,880 cases. With limited resources of only 10 magistrates including the Chief who must spend a large amount of time managing the BSEA functions, DALA's principal challenge on the General Jurisdiction side is to reduce its backlog while maintaining the quality of its adjudications.

The deficits are the result of two primary factors. First, the Division is very small, but with a broad scope of jurisdictions. As a result, while the magistrate resources may be adequate for a normal case flow, there is little flexibility for responding to unusual circumstances. For example, a spike in enforcement cases in one area can disrupt the normal case flow causing a backlog and delays in all other areas. An example of this situation occurred four years ago when the Department of Public Health discovered that some EMT training programs had given EMT's credit for recertification training that had not occurred. This resulted in 100 new EMT license sanction cases, all of which required expedited processing. Another recent example was the closing of Fernald Hospital. This resulted in 25 patient relocation hearings, all of which required multi-day

proceedings and expedited processing at the same time the additional EMT appeals were being processed.

Second, and equally important, the Division historically did not encourage parties to resolve retirement appeals without an evidentiary hearing. Retirement appeals offer few opportunities for settlement before proceeding to an adjudication because retirement boards can provide only those benefits allowed by statute. Still, as a matter of constitutional due process law, an evidentiary hearing is required only in cases in which there is a genuine dispute as to a fact that is material to the outcome of the case. The Division is now screening its retirement cases, which make up a large portion of the Division's backlog, to determine those in which there is no factual dispute. The Division encourages the parties to resolve such matters without an evidentiary hearing by offering expedited review.

Currently, the Division is able to handle its incoming case volume with existing resources, but it is unrealistic to expect that we will be able to substantially reduce the backlog with current resources within any reasonable period of time. Accordingly, we have addressed the backlog by using \$82,000 of its appropriation earmarked for reduction of the retirement case backlog to begin developing a network of trained temporary and part-time magistrates to augment permanent resources until the backlog is eliminated.

With regard to BSEA appeals, an analysis of 11-year statistics shows a steady growth in initial caseload though the cases appear to be settling earlier in the process and before they reach formal mediations or hearings. DALA

anticipates that the volume of BSEA appeals in the earlier stages will continue to grow over time, but whether the experience of earlier settlements will continue is unknown.

PART II: ANALYSIS OF CASES RECEIVED IN 2014

In this section, we focus on the cases received in 2014 and their disposition as specifically required by § 4H of Chapter 7 of the General Laws.

Tab 5 contains a summary and detail report of the cases opened in 2014. The summary report identifies the number of cases received by type of case. The detail report lists each individual case in each case type and identifies its docket number, the identities of the parties, the last event in the case, and the date it was filed with the Division.

Tab 6 contains summary and detail reports of the cases closed in 2014. The cases are listed by case type and in order of docket number within each case type. The “last event” entry in most cases identifies the event (decision, withdrawal, etc.) that caused the case to be closed in the database. The disposition of the 2014 cases that were closed can be tracked by referring to the cases with docket numbers beginning with “14-.” If a case with a docket number beginning with “14-” is not listed on the closed cases report, it is still open as of the date of the report.

PART III: STATISTICS ON HEARINGS HELD AND DECISIONS ISSUED

Tab 7 contains a summary of evidentiary hearings held and decisions issued each month in 2014.

CONCLUSION

We appreciate the opportunity to present this 2014 Annual Report. We remain convinced that the independent “central panel” approach to review of agency actions is the most fair, efficient and cost effective one available and that our work provides a vital service to the Commonwealth and its citizens. Our magistrates, hearing officers and mediators are justly proud of the work they have done over many years and we look forward to meeting the challenges addressed in this report in the future.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Richard C. Heidlage
Chief Administrative Magistrate

Dated: March 31, 2014